

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56949; File No. SR-OPRA-2007-03)

December 12, 2007

Options Price Reporting Authority; Notice of Filing and Order Approving on a Temporary Basis Not to Exceed 120 Days a Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information, as Modified by Amendment No. 1 Thereto, to Modify Various Provisions of the OPRA Plan and the OPRA Fee Schedule to Reflect the Elimination of Separate Fees for Access to Market Data Concerning Certain Foreign Currency Options

I. Introduction

Pursuant to Section 11A of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on October 9, 2007, the Options Price Reporting Authority (“OPRA”) submitted to the Securities and Exchange Commission (“Commission”) an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (“OPRA Plan”).<sup>3</sup> The proposed amendment would amend various provisions of the OPRA Plan in order to reflect the elimination of the separate fees for access to market data concerning Foreign Currency Options (“FCOs”) that currently apply to certain FCOs traded on the Phlx. The OPRA Fee Schedule would similarly be revised to reflect the elimination of the separate FCO service access fees. On November 14, 2007, OPRA submitted Amendment No. 1

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<sup>1</sup> 15 U.S.C. 78k-1.

<sup>2</sup> 17 CFR 242.608.

<sup>3</sup> The OPRA Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 608 thereunder (formerly Rule 11Aa3-2). See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981). The full text of the OPRA Plan is available at <http://www.opradata.com>.

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Incorporated, the International Securities Exchange, LLC (“ISE”), NYSE Arca, Inc., and the Philadelphia Stock Exchange, Inc. (“Phlx”).

to the proposal.<sup>4</sup> On December 11, 2007, OPRA submitted a revised version of Exhibit II to Amendment No. 1 to the proposal, which it requested be substituted for the original version of Exhibit II.<sup>5</sup> This order approves the proposal as modified by Amendment No. 1 for a temporary period not to exceed 120 days, and solicits comment on the proposal from interested persons.

## II. Description and Purpose of the Amendment

Effective March 14, 1995, the OPRA Plan was amended to authorize the imposition of separate, unbundled access charges for market information pertaining to FCOs.<sup>6</sup> Subsequently, effective January 1, 1996, separate access charges for market information were imposed by OPRA, and subject to the exception described below, such separate charges have remained in effect since that time.<sup>7</sup> More recently, OPRA adopted a temporary exception to the separate FCO access fees for “new” FCOs first listed on any exchange on or after December 6, 2005, pursuant to which access to market information pertaining to such securities has been included within OPRA’s basic information service, and has required payment only of OPRA’s basic service access fees.<sup>8</sup> This temporary exception, which is set forth in Section VIII(c)(iii) of the

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<sup>4</sup> Amendment No. 1 did not make any substantive changes to the text of the proposed OPRA Plan amendment, but instead provided a revised Exhibit I to the original filing and offered a new Exhibit II to the proposal. Amendment No. 1 replaced the original filing in its entirety.

<sup>5</sup> The revised Exhibit II made technical changes to the original and corrected an outdated reference to the “NASD,” which is now called “FINRA.”

<sup>6</sup> See Securities Exchange Act Release No. 35487 (March 14, 1995), 60 FR 14984 (March 21, 1995) (File No. S7-8-90).

<sup>7</sup> See Securities Exchange Act Release No. 36613 (December 20, 1995), 60 FR 67144 (December 28, 1995) (SR-OPRA-95-5).

<sup>8</sup> See Securities Exchange Act Release Nos. 52901 (December 6, 2005), 70 FR 74061 (December 14, 2005) (SR-OPRA-2005-03) and 55049 (January 5, 2007), 72 FR 1568 (January 12, 2007) (SR-OPRA-2006-02).

OPRA Plan, is scheduled to expire by its terms on December 31, 2007, at which time, absent further action, all FCOs would become subject to separate FCO service access fees.

Currently, certain classes of FCOs traded on the Phlx are subject to the separate FCO access fees, while other classes of FCOs traded on that exchange (those first listed on or after December 6, 2005) are subject to OPRA's basic service access fees. The only other exchange currently trading FCOs is the ISE, where all of the FCOs were listed subsequent to December 6, 2005, and thus are subject only to OPRA's basic service access fees.

Phlx recently informed OPRA that for business reasons it has ceased listing new series of physical delivery FCOs to replace expiring series, and instead provides a market for foreign currency derivative securities through the listing of new classes of U.S. dollar-settled FCOs, sometimes referred to as World Currency Options. Under the current OPRA Plan, access to market data concerning all options, including the new U.S. dollar-settled FCOs as well as individual equity options and cash-settled index options, is subject to OPRA's basic service access fees. In the case of U.S. dollar-settled FCOs, this reflects the temporary exception described above, whereas in the case of equity and index options it is because OPRA has never adopted separate access fees for its index option service, but instead has made index options subject to the same basic service access fees that apply to equity options.

The purpose of this proposed amendment is to maintain this same fee structure after the temporary exception for FCOs expires at the end of 2007. Trading in existing classes of physical delivery FCOs on Phlx will be restricted to closing transactions until the last outstanding class expires on March 14, 2008, if the remaining positions in these classes are not closed out sooner. Thus by that date, if not sooner, there will no longer be any physical delivery FCOs traded on the Phlx that are subject to the existing separate FCO service access fees. At that time, assuming the

effectiveness of this proposed amendment, access to market data for all options, including U.S. dollar-settled FCOs and all other FCO securities, will require payment only of OPRA's basic service access fees.

As noted, pursuant to the temporary exception in the OPRA Plan for "new" FCOs, all of the FCOs currently traded on ISE are subject only to OPRA's basic service access fees, and none are subject to the separate FCO service access fees. However, unless the OPRA Plan is amended to eliminate the separate access fees for FCOs, upon the expiration of the temporary exception, FCOs traded on ISE would become subject to the separate FCO service access fees. In order to avoid making this change to the status quo on ISE, the effect of which would be to subject FCO subscribers to what for them would be a new, additional, access fee for continued access to FCO market information, ISE joined with Phlx in authorizing the elimination of the separate FCO access fees, and in requesting OPRA to amend the OPRA Plan to reflect the elimination of these separate fees.

As proposed to be amended, the OPRA Plan will treat FCOs in exactly the same manner in which it now treats index options. Specifically, similar to index options, the OPRA Plan will continue to provide for a separate FCO accounting center and provide a framework for the possible future imposition of a separate access fees when and if authorized by the parties that provide a market in those securities, subject to satisfying the requirements of the Act.

Because the proposed amendment cannot become effective until the elimination by expiration or by closing transaction of the last remaining open position in physical delivery FCOs traded on Phlx that are subject to the separate FCO service access fees, which could be as late as March 14, 2008, and because it is necessary to retain the temporary exception from the separate FCO service access charges until these separate charges no longer apply, OPRA







